

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CIVIL MINUTES - GENERAL

Case No. CV 11-02565 AHM (VBKx) Date September 15, 2011  
Title MICHAEL ZELENY v. DAVID AMIR MAKOV

Present: The Honorable A. HOWARD MATZ, U.S. DISTRICT JUDGE

Stephen Montes	Not Reported	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys NOT Present for Plaintiffs:		Attorneys NOT Present for Defendants

**Proceedings:** IN CHAMBERS (No Proceedings Held)

Before the Court is Plaintiff Michael Zeleny's motion to authorize alternative service of process under Federal Rule of Civil Procedure 4(f)(3).<sup>1</sup> For the reasons stated below, the Court DENIES Plaintiff's motion without prejudice. If Plaintiff is unable to serve Defendant by November 15, 2011, Plaintiff may file another motion to authorize alternative service of process. That motion, if necessary, should be filed not later than November 28, 2011.

## I. BACKGROUND

This dispute arises out of a series of anonymous threatening phone calls that Plaintiff Michael Zeleny allegedly received between March 2010 and June 2010. Compl. ¶ 21. Plaintiff alleges that these calls originated from a phone number that belongs to his former friend, Defendant Makov. Compl. ¶¶ 23–25. In his complaint against Defendant, Plaintiff alleges violations of the Anti-Terrorism Act of 1990, 18 U.S.C. §§ 2331–2338, intentional infliction of emotional distress, and assault. Compl. ¶¶ 26–40.

According to Plaintiff, Defendant is a citizen and resident of Israel and will not voluntarily accept service of process. Mot. Auth. Alt. Ser. 4. Plaintiff has taken a number of steps to serve Defendant:

- In April 2011, Plaintiff e-mailed Defendant to ask whether Defendant would accept service of process. According to Plaintiff, Defendant did not consent and asked Plaintiff to direct further communications to Defendant's attorney.

1 Pkt. 10.

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Josh Kiernan. *Id.* at 5.

- In May 2011, Plaintiff made plans to serve Defendant in the United States, but Defendant cancelled his travel plans. *Id.* at 4.
- On July 6, 2011, Plaintiff initiated a Request for Service Abroad pursuant to the mechanism established by the Hague Service Convention, to which the United States and Israel are parties. *Id.* at 5.
- Finally, Plaintiff has retained a private service to serve Defendant in Israel. *Id.* at 5.

Plaintiff now asks the court to authorize alternative service under Federal Rule of Civil Procedure 4(f)(3). Specifically, Plaintiff asks the court to authorize service of process by e-mail or international mail to be sent to Defendant and to Defendant's attorney. *Id.* at 3.

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 4(f) governs the service of process on an individual in a foreign country. Fed. R. Civ. P 4(f). The rule provides three alternative methods of service, and a Plaintiff may use any of these three alternatives. *Rio Properties Inc. v. Rio International Interlink*, 284 F.3d 1007, 1015 (9th Cir. 2002). The third alternative —set forth in Rule 4(f)(3)—provides that service may be effected “by other means not prohibited by international agreement as directed by the court.” Fed. R. Civ. P. 4(f)(3).

The Ninth Circuit has explained that under the plain meaning of the rule, service under Rule 4(f)(3) must be “(1) directed by the court; and (2) not prohibited by international agreement.” *Rio Properties*, 284 F.3d at 1014. No further limitations apply and the plaintiff need not first attempt alternate methods of service. *Id.* at 1014–1015.

The district court has discretion to decide whether the “particularities and necessities of a given case require alternate service of process under Rule 4(f)(3).” *Id.* at 1016. In applying Rule 4(f)(3), other trial courts have “permitted a wide variety of alternative methods of service including publication, ordinary mail, mail to the

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defendant's last known address . . . and most recently, email." *Id.*

Finally, the district court must ensure that the method of service selected comports with constitutional notions of due process. *Id.* The method of service must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection." *Id.*

### **III. DISCUSSION**

A district court has discretion to authorize alternate service of process based on the "particularities and necessities of a given case." *Id.* At this juncture, there is no reason to believe that the particularities of this case call for an alternate method of service.

As described above, Plaintiff has undertaken two methods of service, both of which are currently underway. First, Plaintiff has initiated the mechanisms of the Hague Service Convention by filing a Request for Service Abroad. The request was filed on July 6, 2011, little more than a month before this motion was filed. Second, Plaintiff has hired a private service to serve process on Defendant. Not enough time has elapsed to indicate that either of these methods will fail.

### **IV. CONCLUSION**

Because there is no indication that the particularities of this case require an alternate method of service, the Court DENIES Plaintiff's motion without prejudice.<sup>2</sup> If, by November 15, 2011 Plaintiff remains unsuccessful in serving Defendant, Plaintiff may file another motion seeking authorization of alternate methods of service. That motion, if necessary, should be filed not later than November 28, 2011, and it should contain a declaration setting forth all the relevant facts.

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<sup>2</sup> Dkt. 10.

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No hearing is necessary. Fed. R. Civ. P. 78; L.R. 7-15.

Initials of Preparer

SMO